Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITON NO. 1578 (MS) OF 2001

(Old No. 28362/2000)

Raj Pal Singh,
s/o Mr. Dilawar Singh,
R/o Village Bhabhisa,
District-Muzaffar Nagar. .....Petitioner.

Versus

1. State of U.P. through its District Magistrate, Haridwar.
2. Deputy Labour Commissioner, Saharanpur.
3. Sandeep, S/o Mr. Jagpal,
   R/o Village Saudhali Majara, Distt: Hardwar.

.....Respondents.

Dated: 11.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sharad Sharma, Advocate for the petitioner and Standing Counsel for the respondents no. 1 and 2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the recovery proceedings issued on 8th February, 2000. Further prayer has been made for a writ of certiorari quashing the recovery citation dated 31.05.2000 passed by the respondent no.1.

Briefly stated, the petitioner was served with a notice dated 13.11.1999 issued by the Asstt. Labour Commissioner calling upon the petitioner to file objection if any against the allegation raised in the notice to the effect that during the inspection held on 20.02.1999 three children were found working in the brick kiln of the petitioner.

Against the aforesaid notice, the petitioner filed a detailed objection on 07.06.1999 stating that the nature of

work as alleged in the notice about the children being engaged in the brick kiln would not be said to be a hazard us employment more particularly when the inspection was initiated on 01.01.1999, the brick kiln was not included in the list of prohibited employments as referred in Schedule 1.

In support of his case, the petitioner filed, the age certificate granted by the Chief Medical Officer, which has not been challenged by the respondents.

The petitioner has submitted that the respondent no. 2 has rejected the objection filed by him with a liability of Rs. 20,000/- vide order dated 28.02.2000.

In pursuance of the aforesaid order, the respondent no. 1 has activated the state machinery to recovery the amount as arrears of land revenue. A recovery citation was issued to recovery the said amount from the petitioner.

Petitioner has relied upon the judgment dated 08.12.1999 passed in Writ Petition No. 49877 of 1999 Gulshan Kumar Vs. State of U.P. The operative portion of the aforesaid judgment is quoted below:-

"This petition is being filed challenging imposition of penalty on the basis of judgment of the Apex Court in the case of M.C. Mehta versus State of Tamil Nadu AIR 1997 SC 699 impending enquiry under Child Labour (Prohibition and Regulation) Act, 1986 called 'the Act'.

It is contended by the petitioner that objections were filed against show cause notice but the same has not been decided by affording an opportunity of hearing as required under law. On the other hand the authorities are proceeding to recover penalty under the show cause notice without conducting, as required under law a proper survey by competent authority who should have decided objections and also taken into account relevant factors (including nature of the undertaking etc. and other mitigating circumstances)

which would have been relevant to determine that amount of penalty i.e. whether maximum or lessor amount of penalty contemplated under law should have been imposed or not.

In view of the decisions in the case of M/s Chhota Bhai Munna Bai and Company, Naini and others Versus State of U.P. 1999 (81) FLR 43), as well as the judgment of the Apex Court in the case of M.S. Mehta (supra), the concerned authorities should not have proceeded arbitrarily.

Authority (competent under the Act) is directed, to keep in mind the above judgments and decide the objections, after affording opportunity of hearing in accordance with law and pass final order/s before imposing and initiating action of recovery of penalty if at all warranted.

It is open to the concerned authority to pass fresh orders under the Act as aforementioned.

Respondents are restrained from taking steps or action for the recovery of the penalty contained in the 'show cause notice' under the Act. The concerned authority shall decide the objections in accordance with law keeping in mind aforesaid judgments passed and order/s and then take action accordingly."

In view of the aforesaid facts and circumstances, a writ of certiorari is issued quashing the order dated 28.02.2000 and recovery citation dated 31.05.2000. However, liberty is given to the respondents to initiate fresh proceedings after complying the provisions of the order.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

11.07.2006
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